

**MINUTES
ZONING BOARD OF ADJUSTMENT
FEBRUARY 16, 2016**

1. CALL TO ORDER – Olson called the meeting to order at 4:00 p.m.

2. ROLL CALL

Members Present: Mescher, Juon, Olson and Vargas
Members Absent: Behrens
Staff: Brown, Sall and Wade

3. PLEDGE OF ALLEGIANCE

4. ADOPTION OF AGENDA

Motion by Mescher, second by Vargas to adopt the agenda as printed. Motion carried by unanimous voice vote.

5. APPROVAL – MINUTES OF JANUARY 19, 2016 MEETING

Motion by Vargas, second by Mescher, to approve the minutes as written. Motion carried by unanimous voice vote.

6. PROOF OF PUBLICATION – Sall

7. REVIEW OF MEETING PROCEDURES – Olson

8. PUBLIC HEARINGS

A. Case #AP-16-001: Public hearing on the request of Tom Lustgraaf, to appeal the administrative decision of the Community Development Department that the legal non-conforming use at 1200-7th Avenue, being the North 63.47 feet of Lots 14 and 15, and all of Lot 16, Block 8, McMahon, Cooper and Jefferis Addition, has been abandoned.

Tom Lustgraaf, 7 Westlake Village, presented his request by explaining the history of the business and how he has been trying to find a buyer for the property. He also said he has been trying to obtain a liquor license for the property but it has been denied. He also cited two court cases and said he should be allowed to reopen the business. He said he is not expanding the use, he has not abandoned the use and that the utilities have never been shut off.

Tom Riley, 132 West Graham, also spoke in favor of the request. He said the business is important to the neighborhood and if it is not allowed to reopen it will limit people's right to assemble.

No one else spoke in favor of the request.

No one spoke in opposition to the request

Wade said the Zoning Ordinance as adopted is presumed enforceable and the Community Development Department had no choice but to decide that the nonconforming use had ceased for more than six months.

Much discussion ensued regarding the history of the property and the State of Iowa Appeals Court rulings.

Lustgraaf also said that even though the property is zoned for residential use, the building cannot be used as a house.

Motion by Juon, second by Vargas, to overturn the decision of the Community Development Department that the legal non-conforming use at 1200-7th Avenue has been abandoned.

Finding of Fact:

It was established that the use had discontinued for in excess of six months. The majority found, based upon the testimony of the applicant, that it was through no fault of the applicant and that the applicant had never intended to abandon the legal non-conforming use of the property. The delay in reestablishing the use at this location was the result of extinguishing the legal rights of a former tenant to the property and identifying a suitable tenant to take over the business.

VOTE: AYE – Juon, Mescher and Vargas. NAY – Olson. ABSTAIN – None. ABSENT – Behrens. Motion carried.

B. Case #CU-16-002: Public hearing on the request of Goldie Nielsen, represented by Chad Taylor, for a conditional use permit to allow an existing day care facility in an R-2/Two Family and R-3/Low Density Multi-Family Residential District at 3521 – 11th Avenue, being Lots 5, 6 and 7, Block 34, Brown's Subdivision.

Goldie Nielsen, 157 Corrine Avenue, presented her case saying the property has always been a day care but a conditional use permit was never issued.

No one else spoke in favor of the request.

No one spoke in opposition to the request.

Mescher asked if the applicant was agreeable to the conditions and Nielsen said yes.

Motion by Mescher, second by Olson, to approve the request for a day care facility at 3521 – 11th Avenue subject to the conditions in the staff report and that the driveway improvements be completed within six months of the date of this meeting.

Finding of Fact:

1. The proposed conditional use will comply with all applicable regulations of this ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.
2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.
3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.
4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property.
5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.
6. The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be

considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.

7. The location, nature and height of buildings, structures, walls and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures.

8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.

VOTE: AYE – Juon, Mescher, Olson and Vargas. NAY – None. ABSTAIN – None. ABSENT – Behrens. Motion carried.

C. Case #CU-16-003: Public hearing on the request of TJM Enterprises, Inc., represented by Michael Brenneman, for a conditional use permit to allow a commercial storage facility in a C-2 Commercial District at 2790 Twin City Drive, being part of Lot 1, Block 1, Twin City Shopping Center Addition, more particularly described as beginning at the northwest corner of Lot 1, Block 1, Twin City Shopping Center Addition thence southeast a distance of 144.9 feet; thence northeast a distance of 172.84 feet; thence north a distance of 160.04 feet; thence southwest a distance of 240.63 feet to the point of beginning.

Mike Brenneman, P.O. Box 6211, Omaha, NE 68106, said the applicant purchased the property in order to convert the existing commercial building into a storage facility. After he started the conversion he was told he needed a conditional use permit.

No one else spoke in favor of the request.

No one spoke in opposition to the request.

Motion by Mescher, second by Juon, to approve the request for a commercial storage facility in a C-2 Commercial District at 2790 Twin City Drive, subject to the conditions in the staff report.

Finding of Fact:

1. The proposed conditional use will comply with all applicable regulations of this ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.
2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.
3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.
4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property.
5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.
6. The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.

7. The location, nature and height of buildings, structures, walls and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures.
8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.

VOTE: AYE – Juon, Mescher, Olson and Vargas. NAY – None. ABSTAIN – None. ABSENT – Behrens. Motion carried.

D. Case #CU-16-004: Public hearing on the request of Matt Fatka, on behalf of Highway Signing Inc., for a conditional use permit to allow a contractor yard in an I-2/General Industrial District on vacant property located East of 3346 16th Avenue and North of 3220 Nebraska Avenue, being part of the SW1/4 SW1/4 of Section 34-75-44 described as beginning at a point 365.44 feet East and 40 feet North of the SW Corner of said SW1/4 SW1/4; thence North 696 feet, East 363 feet, South 354.4 feet, West 10 feet, South 350 feet and West 353 feet to the Point of Beginning.

Matt Fatka, Highway Signage Inc., 947 – 250th Street, Avoca, IA 51521 presented the request saying they have executed a purchase agreement for the subject property. He is asking that they be allowed to gravel the storage lot instead of hard surfacing noting that others in the area don't have hard surfaced lots and because the business is on a dead-end road.

Mark Anderson, 3 Sundahl Avenue, spoke in favor of the request saying the business will be good for the City. He said there is no storm sewer in the area and that a gravel lot will drain as opposed to hard surfacing.

No one else spoke in favor of the request.

Carl Groth, 3414 – 9th Avenue, said he is not opposed to the request but is concerned about storm water drainage onto the property he owns which is directly to the west of the applicant.

No one spoke in opposition to the request.

Brown pointed out that other business in the area have complied with the paving requirements when triggered and that the requirements change over the years. She also said that the entire site does not have to be paved, just parking/storage areas and driveways.

Motion by Olson, second by Mescher, to approve the request to allow a contractor yard in an I-2/General Industrial District on vacant property located East of 3346 16th Avenue, subject to the conditions in the staff report except that the gravel storage lot as shown on the submitted site plan shall be surrounded with a 10-foot wide green space buffer and the entire area shall be fenced.

Finding of Fact:

1. The proposed conditional use will comply with all applicable regulations of this ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.
2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.

3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.
4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property.
5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.
6. The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.
7. The location, nature and height of buildings, structures, walls and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures.
8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public.

VOTE: AYE – Juon, Mescher, Olson and Vargas. NAY – None. ABSTAIN – None. ABSENT – Behrens. Motion carried.

9. OTHER BUSINESS

A. Items of Interest – None

10. ADJOURNMENT – Olson adjourned the meeting at 5:11 p.m.

The recording of this proceeding, though not transcribed, is part of the record of each respective action of the Zoning Board of Adjustment. The recording of this proceeding is incorporated into these official minutes of this Board meeting as if they were transcribed herein.